

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JUSTIN EDMISTEN,

Petitioner,

v.

WILLIAM L. GITTERE, et al.,

Respondents.

Case No.: 3:22-cv-00118-RCJ-CLB

ORDER

Petitioner Justin Edmisten has filed a *pro se* Amended Petition for Writ of Habeas Corpus. (ECF No. 20.) On November 8, 2022, this Court granted Respondents' motion to dismiss, in part, finding that Grounds 1(b), 2(b), and 2(c) are unexhausted. (ECF No. 58.) The Court told Edmisten to either: (1) inform this Court in a sworn declaration that he wishes to formally and forever abandon these grounds and proceed on the exhausted grounds; or (2) inform this Court in a sworn declaration that he wishes to dismiss the petition without prejudice to return to state court to exhaust these grounds; or (3) file a motion for a stay and abeyance, asking this Court to hold his exhausted grounds in abeyance while he returns to state court to exhaust these grounds. (*Id.* at 11.)

In response, on November 16, 2022, Edmisten filed a "Martinez Motion." (ECF No. 60.) Although Edmisten cites *Martinez v. Ryan* in his motion, it is unclear what Edmisten is arguing in his motion. In the conclusion of his motion, Edmisten requests that this Court grant his petition or, in the alternative, grant him a stay under *Rhines*. (*Id.* at 4.) However, on November 30, 2022, Edmisten filed a "declaration of abandonment" of Grounds 1(b), 2(b), and 2(c). (ECF No. 63.) In his declaration, Edmisten stated that he "waives the *Rhines* requirement." (*Id.*) Consequently, it appears that Edmisten wishes to proceed by abandoning the unexhausted grounds, proceeding on the exhausted grounds, and foregoing any request for other relief at this time.

Edmisten has also filed a motion to strike Respondents' answer. (ECF No. 59.) In his motion, Edmisten explains that this Court gave Respondents until October 19, 2022, to file an answer, but Respondents failed to do so. (*Id.*) On July 21, 2022, in this Court's scheduling order, it ordered "that Respondents file a response to the Amended Petition, *including potentially by motion to dismiss*, within 90 days." (ECF No. 22 at 2 (emphasis added).) As such, it is true that this Court ordered Respondents to respond by October 19, 2022, as Edmisten explains. However, Respondents fulfilled this requirement by filing a motion to dismiss on October 18, 2022. (*See* ECF No. 40). Accordingly, Edmisten's motion to strike is baseless.

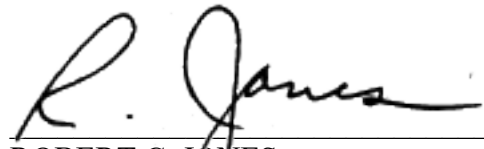
IT IS THEREFORE ORDERED that Petitioner's request to voluntarily abandon Grounds 1(b), 2(b), and 2(c) is granted. **Grounds 1(b), 2(b), and 2(c) are DISMISSED without prejudice as unexhausted.**

IT IS FURTHER ORDERED that Respondents have until December 30, 2022, to answer the remaining claims for relief in the amended petition. Petitioner will have 30 days from the date of service of the answer to file a reply. Any additional instructions stated in the scheduling order (ECF No. 22) remain in effect.

IT IS FURTHER ORDERED that Petitioner's motion to strike (ECF No. 59) is **DENIED.**

IT IS FURTHER ORDERED that Petitioner's Martinez Motion (ECF No. 60) is **DENIED.**

Dated: November 30, 2022


 ROBERT C. JONES
 UNITED STATES DISTRICT JUDGE